

SPECIAL CIVIL APPLICATION No 3795 of 1989

Hon'ble MR.JUSTICE M.C.PATEL                      Sd/-

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made JJJJJ

5. Whether it is to be circulated to the Civil Judge? : NO

Nos. 1 to 5 No

V S SINHA OR HIS SUCCESSOR

MR.PAHWA FOR M/S THAKKAR ASSOC. for Petitioners  
MR.BY MANKAD, AGP. for Respondents No.1 & 2.  
DS AFF.NOT FILED (R) for Respondent No. 3, 4

The petitioner purchased a land situated at block

no.460 in the sim of village Pariya, Taluka Olpad measuring 2 Acres and 34 Gunthas from respondent no.4 by a registered sale-deed dated 4.7.1979. According to the petitioner he was an agriculturist at the time of sale and after acquiring possession of the land he started cultivating the same. The name of the petitioner was entered in the revenue record by change entry no.3027 dated 22.7.1979 and it was certified by the Mamlatdar on 30.3.1980. However, in 1982 the Deputy Collector, Olpad initiated suo motu proceedings on the ground that the petitioner was not holding other land within a distance of 8 kms. and issued show cause notice to the petitioner. It appears from the order passed by the Deputy Collector that the petitioner had said in his statement that he was jointly holding land in village Pipodara before he purchased the land and he was already an agriculturist. The Deputy Collector observed that the petitioner had not produced any evidence in support of his say that he was holding any land at Pipodara and hence there was reason to believe that he was not holding agricultural land within 8 kms. of the disputed land and therefore, he was liable to be treated as non agriculturist. He, therefore, by his order dated 3.9.1985, cancelled the mutation entry on the ground that it was illegal. It appears that the petitioner being aggrieved by the said orders of the Deputy Collector had preferred revision application in Gujarat Revenue Tribunal but the Tribunal returned the memo of revision for presentation before the Competent Authority. The petitioner, thereafter, presented revision application before the Collector, Surat who after hearing the petitioner and going through the record found that the petitioner was jointly holding land with his brother in village Pipodara but his name was entered on 29.1.1982 which was after the sale-deed in question and hence he was a non agriculturist at the time of sale. Moreover he also recorded the finding that village Pariya was at the distance of more than 8 kms. from village Pipodara and hence the petitioner could not be said to be holding the land within a distance of 8 kms. He also observed that no evidence regarding distance had been produced.

The petitioner carried the matter in revision before the Additional Chief Secretary, Revenue (Appeal) who by his order dated 23.1.1989 refused leave to admit the revision application. The petitioner thereupon filed the present petition under Article 226 of the Constitution challenging the said orders passed by the Deputy Collector, Collector and the Additional Chief Secretary.

The learned Counsel for the petitioner has raised several contentions. Firstly, he contended that the authority could not have exercised suo motu revisional powers beyond reasonable period. He also submitted that since the petitioner was holding the land jointly with his brother at village Pipodara it could not be said that he was not an agriculturist. He also challenged the finding that village Pipodara was at the distance of more than 8 kms. from village Pariaya and for that purpose he relied on a certificate dated 16.3.1989 said to have been issued by the Pipodara Gram Panchayat. His next contention was that the requirement of holding land within 8 kms. was introduced by amendment in the year 1982 and hence, it was not applicable in the case of the petitioner since the petitioner had purchased the land on 4.7.1979. His last contention was that it was obvious that the Deputy Collector had exercised power under the Bombay Land Revenue Code and Land Revenue Rules for cancellation of entry and he could not have examined the legality of the entry with reference to the provisions contained in Bombay Tenancy and Agricultural Lands Act, because it was only the Mamlatdar who could have initiated proceedings under the said Act, if the sale was invalid.

It is not necessary to examine all the contentions raised because the last contention raised on behalf of the petitioner is supported by the decision of this Court in the case of Evergreen Apartment Co-op. Housing Society Vs. Special Secretary, Revenue Department, Gujarat State reported in 1991(1) GLR 113 in which the Court observed as follows :

- "12. There is much substance in the second submission of Mr.Hawa also. Ordinarily when a transfer of property takes place by a registered document, an entry is effected in the revenue record and it is certified by the Mamlatdar after making necessary inquiries. If there is any dispute regarding mutation, the dispute has to be entered in the register of the disputed cases and then such disputes are to be disposed of by the Mamlatdar. Under sub-rule (5) of Rule 108 of the Rules, the aggrieved party can prefer an appeal within 60 days from the date of the service of the order. The State Government has power to call for and examine the record of any enquiry or the proceedings of any subordinate Revenue Officer and to review the same under sub-rule (6)

of the Rules. It is to be noted in the present case that no appeal had been presented within 60 days from the date of Mamlatdar's order certifying the initial entry. The Assistant Collector, Surat took the said entry in suo motu revision, even though he had no such power under the provisions of Rule 108. It, therefore, appears that the Additional Chief Secretary, Revenue Department, remanded the proceeding to the Collector for treating the same as an appeal. This was done after a period of 4 years after the certification of the entry. It was only the State Government which had the power to call for a record of inquiry or proceeding under sub-rule (6) of Rule 108. Even the State Government was empowered; to satisfy itself "as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings". So the entire inquiry and revisional power has to proceed under the Bombay Land Revenue Rules and not under any enactments like the Bombay Tenancy and Agricultural Lands Act, Urban Land (Ceiling and Regulation) Act or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Thus, on this second ground also the orders of the Collector

and the Additional Chief Secretary appear to be beyond their jurisdiction....."

The ratio of the said decision is squarely applicable to the facts of the present case. If the sale was invalid being in violation of the provisions of the Bombay Tenancy and Agricultural Lands Act, it was for the Mamlatdar to initiate proceedings and it was not open to the revenue authority to pass an order of cancelling entry on the assumption that the transaction recorded in the entry was against the provisions of the Tenancy Act.

The result is that the petition has to be allowed. The impugned orders passed by the Additional Chief Secretary dated 23-1-1989, the order of the Collector, Surat dated 25.9.1987 and the order of the Deputy Collector, Olpad dated 3.9.1985 in RTS Revision No.6/82 are quashed and set aside. Rule made absolute accordingly. No order as to costs.

--

m.m.bhatt